



Docket: P/35-4 CIP

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: M. Krysiak

Serial No.: 09/769,076

Examiner: A. Valenti

Filed: January 25, 2001

Art Unit: 3643

For: COLORED OR FRAGRANCED HORTICULTURAL...

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

DECLARATION OF CHARLES HOLTON

I, Charles Holton declare as follows:

1. I have 30 years experience in the field of turf grass establishment and erosion control, 10 years as CEO of Ampro Industries, a manufacturer of pelleted mulch and other products.
2. I have reviewed the application of the present invention.
3. I am the inventor of U.S. Patent No. 6,021,598. I have read the Office Action of October 8, 2009. The Examiner states that my patent teaches a dye and the dye indicates to a user the environmental conditions of the soil where the mulch is placed.
4. Regarding color, my patent specifically taught that a mulch colored with a green dye, when applied to the soil, will give the visual appearance of the color of grass once applied to the soil. Nowhere does my patent teach nor did I invent, the use of a colored mulch to serve as an indicator for environmental conditions, including as a watering

indicator where the mulch changes colors based on the specific environmental condition relating to the presence and/or absence of water. Rather, this concept is clearly taught by the Encap patent of which, based on my knowledge they are the inventor of.

5. The Examiner states that it would have been obvious to one of skill in the art to modify the teachings of my patent with the teachings of Lombard. The Examiner states that it would have been obvious to one of skill in the art to modify the teachings of my patent with the teachings of Lombard since the modification is merely an engineering design choice involving the selection of a known alternate dye selected for the known advantage of monitoring pH levels as taught by Lombard and an environmentally safe dye as taught by Lombard. I would not consider modifying my teachings with the teachings of Lombard to be merely an engineering design choice. As stated in my patent, the dye is specifically used to impart a green color to the granules. Further, the reason for the dye is purely for aesthetic reasons to make the color of the mulch resemble that of actual grass, i.e. a Kelly green color. Since Lombard does not teach a green dye, there would be no reason for me to use the teachings of Lombard. Further, since my patent does not teach the mulch being able to indicate environmental conditions, there is no reason that I would have chosen a dye which monitors pH levels as taught by Lombard.

6. The Examiner states that my patent teaches a method of placing colored mulch on top of soil, and changing colors of the mulch based on the conditions of the soil. First of all, this goes against the teachings of my patent. My patent specifically teaches a green color which matches the color of the grass. My teachings go against that the mulch

would change colors. Therefore, the comments made by the Examiner go against what I taught in my patent.

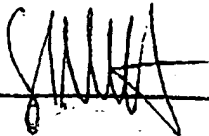
7. With regards to the Examiner's statements that it would have been obvious to modify my teachings with the teachings of Skelty to make the dye fluorescent, again goes against the teachings of my patent. I specifically taught that the color of the mulch is green to match the color of grass. Since the color of grass is not fluorescent, it would not be obvious to modify my teachings with the teachings of Skelty.

8. With regards to the Examiner's statements that one of skill in the art would be motivated to modify my teachings with the teachings of Swatzina, for an aesthetic design, I disagree. The Examiner states that Holton as modified by Swatzina, the selection of a red fertilizer would inherently teach as the red disappears or fades from the mulch, the fertilizer is disappearing too. This again goes against the teachings of my patent. My patent specifically teaches a green color to match grass. It would be against my teachings to have a red color since red does not match grass. Further, as stated above, it is not in the teachings of my patent for the color to fade, based on fertilizer disappearing, nor would I want the color to fade.

9. I hereby declare that all of the statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United

States Code, and that such willful false statements may jeopardize the validity of the patent application to which it relates or any patent issued thereon.

Dated: 4/8/10



Charles Holton